

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	DOCKET UE-200115
)	
PUGET SOUND ENERGY)	
)	NORTHERN CHEYENNE TRIBE’S
For an Order Authorizing the Sale of All of)	PETITION TO INTERVENE
Puget Sound Energy’s Interests in Colstrip)	
 Unit 4 and Certain of Puget Sound Energy’s)	
Interests in the Colstrip Transmission)	
System.)	
_____)	

Pursuant to WAC § 480-07-355, the Northern Cheyenne Tribe (“Tribe”), a federally-recognized Indian tribe with a sovereign government based on the Northern Cheyenne Reservation in close proximity to Colstrip, hereby petitions the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) for leave to intervene in the above-referenced docket as an intervenor with full party status, as described in WAC § 480-07-340. This late-filed Petition to Intervene is made pursuant to WAC § 480-07-355(1)(b) and for good cause, as set forth more fully herein. The business address for the Northern Cheyenne Tribe is:

The Northern Cheyenne Tribe
Attn: William Walksalong, Tribal Administrator
Littlewolf Capital Building
600 Cheyenne Ave
Lame Deer, Montana 59043

The Tribe will be represented in this proceeding by Ziontz Chestnut. All documents relating to this proceeding should be served on counsel for the Tribe at the following address:

Brian Chestnut
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The Tribe does not request paper service, unless required by WUTC rules or law. If permitted by the presiding officer, the Tribe requests that electronic service be provided to the following:

Laura Bartholet, lbartholet@ziontzchesnut.com
Brian Chestnut, bchestnut@ziontzchestnut.com

I. Basis for Intervention

On February 19, 2020, PSE filed an application that seeks a Commission order authorizing the sale of PSE's interests in Colstrip Unit 4 and the Colstrip Transmission System to NorthWestern Energy, as well as approval of a power purchase agreement with NorthWestern Energy.

The northern boundary of the Northern Cheyenne Reservation is roughly 20 miles from Colstrip. The proposed sale of Colstrip Unit 4 and the Colstrip Transmission System, and the associated likely extension of the active life of Colstrip Unit 4, impacts the Northern Cheyenne Tribe in several important ways. Colstrip operations, including associated mining, directly provide at least 100 jobs for Tribal members. Because of limited employment opportunities on and around the Northern Cheyenne Reservation and extended family networks, these Colstrip-related jobs directly support at least 1,000 Tribal members. These jobs are of critical importance to the Tribe's well-being.

The Tribe also is on the front lines of social, economic, and environmental impacts from continued operations, and eventual cleanup and remediation. Impacts to air and water quality

disproportionately affect Tribal members. The social impacts that can be associated with a temporary workforce spill over onto the Reservation. Further, Tribal members residing off-Reservation use electricity generated at Colstrip.

The Tribe also has an acute interest in the proposed sale of transmission associated with Colstrip Unit 4. The Tribe has abundant renewable energy resources, including solar and wind, and has made significant strides toward development of those resources. The most likely market for renewable Tribal power would be in Washington, likely necessitating transmission through Colstrip. The development of renewable energy is one of the Tribe's most promising options to alleviate the high unemployment and poverty that has stricken the Reservation for far too long.

Because of the many ways in which the Tribe and Tribal members interface with Colstrip operations, the Tribe and its members face enormous consequences from the eventual drawdown of Colstrip Unit 4 and transition of the regional economy. The Tribe has repeatedly sought to protect its interests and promote long-term planning for the region, for the benefit of its members and the surrounding community. In short, the Tribe has a substantial interest in these proceedings. The Tribe's position with respect to the approval is that the approval must consider the interests of the Northern Cheyenne Tribe, including employment, community transition, and access to transmission for renewable energy.

II. Good Cause for Late Filing

Pursuant to WAC § 480-07-355(1)(b), the Tribe has good cause for making a late-filed petition to intervene. The Tribe has only recently learned that it may not be able to present testimony in the parallel approval proceedings before the Montana Public Service Commission, and the impacts of covid-19 have severely hampered the operations of the Tribal government and delayed the Tribe's ability to authorize intervention here.

With respect to the Public Service Commission, the Tribe first sought to protect its interests in community transition through participation in NorthWestern Energy's rate setting proceedings, Docket No. Docket No. D2018.2.12. In that docket, the PSC ruled that Tribal testimony was relevant and admissible. Order No. 7604s, at ¶ 18. In the final order the PSC did not reach the Tribe's concerns and instead directed the Tribe to participate in the approval proceedings in order to address community transition funding and other related issues. Order 7604u, ¶ 351 ("From the Commission's perspective, there is no doubt that in this new contested case docket, CU4 issues such as retirement dates and stranded costs, remediation costs, and community transition funding will require investigation."). Based on good faith reliance on that order, the Tribe intervened in the docket for approval of Northwestern Energy's acquisition of Colstrip Unit 4, Docket No. D2019.12.101. The PSC allowed for the Tribe's intervention.

However, the PSC has since reversed course, and suggested that all evidence relating to community transition funding may not be relevant and admissible in those proceedings. The Tribe has filed a response to a pending motion in limine from Northwestern Energy seeking to exclude all testimony relating to community transition funding. The potential that participation may be limited before the PSC has come as a surprise to the Tribe given the PSC's prior rulings, and heightens the Tribe's interests in these proceedings as potentially the only available forum to adequately represent the Tribe's interests.

The Tribe has also faced grave challenges with the covid-19 pandemic. As an indigenous population with dense housing, a vulnerable population of elders, and limited access to health care, the Tribe has taken aggressive steps and issued repeated stay-at-home orders throughout the spring and summer. By early March, when the deadline to intervene in this matter was scheduled, the Tribal government already had difficulties meeting, and started to prioritize

community health response over other matters. Northern Cheyenne President Peña issued an emergency order on March 14, 2020, with subsequent stay-at-home orders issued (and currently in place). The threat of covid-19 and recent increase in covid-19 infections on and around the Tribe's Reservation has resulted in delay in being able to gain Tribal Council authorization required to participate in this matter.¹

Finally, it appears that no party will be harmed by the Tribe's participation and the Tribe's participation will not unduly delay the proceeding, which has been paused pending completion of a buy/sell agreement. The Tribe does not plan to seek discovery, and only wishes to participate to explain its interests in the proceedings and advocate for consideration of the Tribe as part of the plan for Colstrip operations, transmission, and eventual community transition. While the Tribe's interests are not currently represented in the proceedings, they are part of the consideration of whether the approval is in the public interest. The Tribe does not seek to broaden the issues in the proceeding.

III. Relief Sought

As described above, the Tribe has a direct and substantial interest in this proceeding that will not be adequately represented by any other party, and may be affected by any Commission determination made in connection with this proceeding. Thus, it is in the public interest to allow the Tribe to intervene in this proceeding. Accordingly, the Tribe respectfully requests that the Commission grant the Tribe's petition for intervention.

Dated this August 21, 2020.

Respectfully submitted,

ZIONTZ CHESTNUT

¹ The Tribe was able to intervene before the PSC because the Council had previously authorized participation in PSC proceedings related to rate setting.

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